IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

MONDAY, THE THIRD DAY OF APRIL
TWO THOUSAND AND SIX

PRESENT
THE HON'BLE SRI JUSTICE BILAL NAZKI
and
THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION No.4917 of 2006

Between:

Smt.Hema

..... PETITIONER

AND

The District Collector &
District Magistrate, Hyderabad District,
Nampally, Hyderabad, and another.

.....RESPONDENTS

ORDER: ***(Per Hon'ble Sri Justice Bilal Nazki,)***

Heard learned Counsel for the parties.

This Writ Petition has been filed by the wife of one Gopal Singh (hereinafter referred as 'detenu'), who has been detained by the order of the first respondent dated 16-02-2006 in terms of the provisions of the Andhra Pradesh Prevention of Dangerous Activities of Boot Leggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986, (for short

'the Act').

The order of detention has been challenged mainly on two grounds. One of the grounds taken is that the detenu was in custody in connection with Crime No.78/2005-06 on the date when the order of detention was passed. But, the records do not reveal that the District Magistrate was aware of this fact. This relevant material had been suppressed before the District Magistrate, therefore, the subjective opinion of the District Magistrate to detain the detenu was defective. The second ground of attack is that the detaining authority himself had fixed the period of detention as three months, which is not permissible under law, and that the detaining authority can only detain a person for a period of twelve days till the Government confirms the detention and passes appropriate orders.

Coming to the first ground, the question whether the detenu was in jail when the order of detention was passed is not disputed. The learned Government Pleader contends that this fact was known to the detaining authority as all the relevant material was placed before him when he passed the order of detention. In this connection, the learned Government Pleader refers to the charge sheet in Cr. No.78/2005-06. In this charge sheet, which is filed on

23-01-2006, it is stated as under:

> 'Basing on the Panchanama the LW.3 registered the case in Cr.No.70 of 2005-06 under Section 7(A) of A.P.Prohibition Act, 1995, and investigated into the case. The accused was produced before the Hon'ble Court for judicial custody. The case property was deposited before the Deputy Commissioner of Prohibition and Excise, Hyderabad for confiscation.'

Even if the contention of the learned Government Pleader is accepted, even then the charge sheet does not disclose that the detenu was in custody on 23-01-2006. It merely says that the detenu was produced before the Court for judicial custody. It does not even say that he was remanded to judicial custody. Therefore, in our view, there was nothing before the District Magistrate to show that the detenu was in judicial custody on the date on which the order of detention was passed. Law, in this connection, has been reiterated by the Supreme Court. In a recent Judgment reported in ***T.V.Sravanan vs. State***[1], it was held as under:

> 'The bail applications moved by the appellant had been rejected by the courts and there was no material whatsoever to apprehend that he was likely to move a bail application or that there was imminent possibility of the prayer for bail being granted. The "imminent possibility" of the appellant coming out on bail was merely

> the
> ipse dixit of the detaining authority unsupported by any material whatsoever. There was no cogent material before the detaining authority on the basis of which the detaining authority could be satisfied that the detenu was likely to be released on bail. The inference has to be drawn from the available material on record. In the absence of such material on record the mere ipse dixit of the detaining authority is not sufficient to sustain the order of detention. There was, therefore, no sufficient compliance with the requirements as laid down by the Supreme Court.'

Coming to the second point that the detention period had been fixed for three months by the detaining authority, it would be suffice to refer to the judgment of this Court reported in ***A.Raja Reddy vs. Collector and District Magistrate***[2]***.***

In view of what has been stated herein above, the order of detention cannot be sustained.

Therefore, the Writ Petition is allowed. The impugned order of detention dated 16-02-2006 is quashed. The detenu *viz*.,
Sri Gopal Singh, S/o.Satyanarayana Singh, Hindu, 35 years, R/o.Badichowdi, Hyderabad shall be released forthwith, if not required in any other case.

-

(Bilal Nazki, J)

3rd April, 2006

(G.Chandraiah, J)

LUR

[1] (2006) 2 Supreme Court Cases 664

[2] 1996 (4) ALD 1154